

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
FRANK JOSEPH ROSSITER)

Appearances:

For Appellant: Frank Joseph Rossiter,
in pro. per.
For Respondent: Kendall E. Kinyon
Counsel

O P I N I O N

This appeal is made pursuant to section 19057, subdivision (a), of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Frank Joseph Rossiter for refund of personal income tax in the total amount of \$362.87 for the years 1969 and 1970.

Appeal of Frank Joseph Rossiter

Appellant, believing that he had insufficient income, did not file a California personal income tax return for 1969. However, based upon information received from the Internal Revenue Service, respondent determined that appellant did have taxable income for 1969 and issued a notice of proposed assessment in the amount of \$93.75. Appellant did not protest the notice and it became final. For 1970 appellant filed a return reflecting tax liability of \$123.00. Respondent contends that no payment was received with the return. Although appellant maintains that he paid the liability by check, he was unable to provide any evidence of the claimed payment. Demands for payment of the 1969 and 1970 liabilities were made by respondent. Ultimately, on July 12, 1978, appellant paid the amount of tax, penalties and interest due by a check in the amount of \$362.87.

On March 27, 1979, appellant filed a claim for refund (first claim) in the amount of \$362.87. The claim was denied by respondent's notice dated May 8, 1979. The notice was mailed to appellant at the same address that appeared on the claim. Appellant did not appeal respondent's action, and it became final ninety days after the denial. (Rev. & Tax. Code, § 19057.) Apparently, appellant contends that he never received notification that the first claim was denied. Thereafter, on January 16, 1980, appellant filed a second claim for refund for the same amount and on the same grounds as the first claim. The second claim was denied, and this appeal followed.

With respect to this board's jurisdiction of appeals from the denial of a claim for refund, section 19057 of the Revenue and Taxation Code provides that respondent's action on a claim for refund is final unless the taxpayer files an appeal with this board within ninety days from the date the notice is mailed. Since appellant did not appeal the denial of the first claim for refund, it became final ninety days after May 8, 1979, the date the notice was mailed. The fact that appellant contends he did not receive the notice is of no avail where the notice was mailed to the proper address. (Appeal of Herond N. and Marie Sheranian, Cal. St. Bd. of Equal., Jan. 7, 1964.)

It is well settled that once a claim for refund is denied, the filing of an identical second claim is a nullity. (B. Altman & Co. v. United States, 40 F.2d 781, 784 (Ct. Cl.) cert. den., 282 U.S. 863 [75

Appeal of Frank Joseph Rossiter

L.Ed. 763] (1930); see also Allstate Insurance Co. v. United States, 550 F.2d 629, 633 (Ct. Cl. 1977) and the cases cited therein.) Therefore, respondent's action in denying the second claim, which was substantially the same as the first claim, was without legal significance. (B. Altman & Co. v. United States, supra.) Consequently, we lack jurisdiction over **this** matter. (Appeal of Herond N. and Marie Sheranian, supra; cf. Appeal of Herman M. and Marie A. Karbacher, Cal. St. Bd. of Equal.; March 27, 1973.) In effect, appellant's entitlement to relief from **this** board, 'if any, was extinguished when he allowed the denial of his first claim for refund to become final without perfecting an appeal.

For these reasons, we conclude that the appeal must be dismissed for lack of jurisdiction.

Appeal of Frank Joseph Rossiter

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Frank Joseph Rossiter for refund of personal income tax in the total amount of \$362.87 for the years 1969 and 1970, be and the same is hereby dismissed for want of jurisdiction.

Done at Sacramento, California, this 5th day of January , 1982, by the State Board of Equalization, with Board Members Mr. Reilly, Mr. Dronenburg, and Mr. Nevins present.

_____, Chairman
George R. Reilly. _____, Member
Ernest J. Dronenburg, Jr. _____, Member
Richard. I. Nevins _____, Member
_____, Member